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Electronically Filed: December 5, 2011

6 Attorneys for Christopher R. Barclay,
7 Chapter 11 Trustee

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

| | | |
|-------------------------------|---|--|
| 10 In re |) | CASE NO. BK-S-10-27855-BAM |
| 11 AMERICAN PACIFIC FINANCIAL |) | Chapter 11 |
| 12 CORPORATION, |) | |
| 13 Debtor. |) | SECOND STATUS REPORT OF CHAPTER |
| |) | 11 TRUSTEE CHRISTOPHER R. |
| |) | BARCLAY |
| |) | Date: December 6, 2011 |
| |) | Time: 10:00 a.m. |
| |) | Ctrm: BAM - Courtroom 3 |
| |) | Foley Federal Building |
| |) | 300 Las Vegas Blvd. South |
| |) | Las Vegas, NV 89101 |
| |) | Judge: Hon. Bruce A. Markell |

18
19 Christopher R. Barclay ("Trustee"), the Chapter 11 trustee of the bankruptcy estate of
20 American Pacific Financial Corporation ("Debtor"), hereby files his second status report in this
21 Chapter 11 case.

22 1. This Chapter 11 case commenced on September 21, 2010 by the filing of a voluntary
23 petition for relief under Chapter 11 of Title 11 of the United States Code.

24 2. On August 8, 2011, I filed my first status report. In that report, I described my efforts
25 following my appointment to learn about the Debtor's financial affairs and prospects for moving
26 forward in the chapter 11 case.

27 3. Prior to filing its bankruptcy petition, ostensibly, the Debtor was in the business of
28 purchasing distressed assets and attempting to "turn them around" so they could be resold at a profit.

1 In the course of its business, the Debtor solicited investment funds from investors, some of whom
2 loaned funds to and became creditors of the Debtor and others of whom loaned to or invested in
3 single purpose entities formed to hold title to acquired assets which were managed by the Debtor,
4 and these investors became creditors or equity owners (with the Debtor) of the single purpose entity.
5 To induce investors to make loans or investments, the Debtor frequently guaranteed the original
6 investment. If such guaranteed investments became worthless, the Debtor would assume that
7 obligation or transfer the investment to another asset or investment entity held by the Debtor.

8 4. By the time of my appointment, the Debtor had, at best, only nominal operations at
9 that time. The single largest investment held is the Debtor's investment in Capital Foods, LLC
10 ("Capital Foods"). This investment however generates no current income or cash flow and the
11 Debtor's voting interest in this entity is a non-controlling interest. The remaining performing
12 investments include an oil & gas interest that currently generates monthly royalties of between
13 \$1,500 and \$5,000 and loans or promissory notes that provide approximately \$10,000 per month of
14 interest income. As all of these investments are passive holdings that are in various stages of
15 liquidation, the Debtor has no ongoing operations beyond collecting and depositing remaining
16 investment returns.

17 5. As of the date of this report, monthly Chapter 11 Operating Reports have been filed
18 through October 31, 2011. When I was appointed, the Debtor turned over to me bank accounts with
19 combined balances totaling \$53,836.69. After my appointment, I immediately eliminated
20 unnecessary costs and expenses and terminated the Debtor's practice of making unauthorized
21 payments to insiders. As of November 30, 2011, the balance in the bankruptcy estate's bank
22 accounts totaled \$276,201.29. The accrued but unpaid chapter 11 claims of professionals in this case
23 (excluding my fees as chapter 11 trustee) totals more than \$405,000, net of retainers held by some
24 professionals. Under the circumstances, despite substantial improvement in the cash on hand since
25 the date of my appointment, this Chapter 11 case remains administratively insolvent.

26 6. On November 14, with assistance from my counsel, I served notice of my intention to
27 abandon certain assets immediately. These include assets that are burdensome and unnecessary to
28 effectuate reorganization of the Debtor's financial affairs. Namely, certain parcels of real property

1 located in California and the Debtor's interest in 2600 Roosevelt, LLC. There appears to be no
2 equity in the property after consideration of existing liens and secured claims. There also appears to
3 be no benefit to the Debtor's bankruptcy in continuing to hold an interest in these real property
4 assets, especially when one considers the accrual of property taxes and ongoing costs of maintenance
5 and insurance.

6 7. As described in my first report, the Debtor was a distressed lender to an entity known
7 as Naturopathic Laboratories International, Inc., which is now itself in a Chapter 7 bankruptcy
8 proceeding in the Southern District of New York. I recently obtained court approval to settle claims
9 and disputes between these two estates pursuant to a settlement agreement that required approval in
10 both bankruptcy courts. I expect that this settlement will bring in a small amount of cash (slightly
11 more than \$12,000) to this estate plus miscellaneous assets and property rights which I will seek to
12 sell for the estate to the highest bidder.

13 8. In the period since the filing of my first status report, I took additional steps and
14 actions to extend my preliminary investigation and review of the Debtor's assets and liabilities as
15 well as the Debtor's financial relationships with certain related and affiliated entities, other insiders
16 and its creditors. I undertook this further study with two principal objectives in mind. First, I am
17 interested in understanding the nature and composition of the Debtor's assets of value and potential
18 for return to creditors. To this end, I have attempted to identify the operative documents and
19 agreements that express and describe those ownership interests and any and all claims or
20 encumbrances against them. Second, in light of a number of complaints that I understand have been
21 made regarding the Debtor's operations before the Chapter 11 case began, I am interested in learning
22 information about the Debtor's pre-petition flow of funds and accounting for transactions. An
23 important focus of the latter objective is to begin to ascertain what level of confidence can be
24 provided to creditors and other parties that at least the Debtor's material assets and claims have been
25 identified and accounted for among the Debtor's books and records.

26 9. As Trustee, I wish to make clear a point contained in my earlier report: my
27 investigation and review is not complete, nor have I identified resources readily available to me
28 sufficient to fund and conduct a full scale forensic accounting investigation. Instead, to this juncture,

1 I have relied heavily on the willingness of parties to voluntarily submit to interviews, to be
2 forthcoming and to honor my requests for production of information and documents and to do all
3 those things in good faith. Sadly, as described more fully in my accompanying declaration, my
4 efforts to investigate the financial affairs surrounding the Debtor's assets and transactions with its
5 creditors and others has been met with resistance on multiple fronts.

6 10. From the beginning of my tenure as Trustee, I attempted to obtain access to the report
7 prepared by the OCC's forensic accountant, Craig L. Greene, who was appointed by order of this
8 Court. After my request to the OCC to voluntarily produce the report and grant access to Mr.
9 Greene was denied, I filed an application under Bankruptcy Rule 2004 for production of the report
10 and examination of Mr. Greene. In what can only be described as a bizarre moment in this case, the
11 OCC filed written opposition to my Rule 2004 application. The OCC argued that the report was
12 subject to the attorney-client privilege and therefore I was not entitled to view it or to examine Mr.
13 Greene. The OCC further argued that since I was a CPA myself, I should just conduct my own
14 investigation and not seek to rely on or be aided by the investigative work already done by the OCC
15 or its expert in this case.

16 11. Fortunately, after oral argument at a hearing on my Rule 2004 motion, the Court
17 overruled the objection by the OCC and granted my request by ordering the Greene report be
18 produced and Mr. Greene examined. I decline to speculate on what ulterior motive, if any,
19 individual members of the OCC had in attempting to make my investigative efforts in this case more
20 difficult (and expensive). Suffice to say that the OCC's actions in this regard remain quite puzzling.

21 12. I reviewed Mr. Greene's report and later attended his examination on September 20,
22 2011. The contents of the Greene report and Mr. Greene's examination remain the subject of a
23 confidentiality agreement so I will not comment further on those matters in this report. What I can
24 say is that having reviewed the plan and disclosure statement submitted by the Debtor in this case,
25 before and after the Greene production and examination and in reflection on available information
26 regarding the Debtor's financial affairs, I am concerned that the Debtor's proposed plan does not
27 appear to have been submitted in good faith.

28 13. Following the Greene examination on September 20, my counsel and I sought to

1 obtain information from the Debtor and others consistent with the two-pronged objectives that I
2 outlined above. The progress to date of these efforts is uneven.

3 14. As I reported before, I have spent time, as has my counsel, reviewing available
4 documentation of the Debtor's interests, claims and investments in Capital Foods in an attempt to
5 reconcile discrepancies, if not outright contradictions, between documents which purport to support
6 the Debtor's statements in its last plan filing (Docket #301) to the effect that the "[o]wnership
7 interests in Capital Foods have remained the same since 1998." This brief status report is
8 insufficient to identify the contradictions between historical documents of the Debtor, Capital Foods
9 and their related and affiliated entities which bear upon the representation or suggestion that there is
10 a clear ownership history of the ownership interests in Capital Foods since 1998. What I can say by
11 way of update on this issue is that I believe I have made some progress, albeit stubborn progress, on
12 understanding the observed discrepancies. However, as described more fully in my accompanying
13 declaration, after granting me access to certain records and documents, the Debtor's representatives
14 now belatedly seek to deny me use of those documents on grounds that certain of the documents
15 disclosed to me are subject to the attorney-client privilege.

16 15. My counsel and I have also spent time attempting to understand the liens,
17 encumbrances and other restrictions that impair and restrict the timing of any realization of the
18 potential future value of the Capital Foods, LLC investment holdings. While it appears that only
19 very recently we have belatedly received some of the documents and information necessary to an
20 understanding of these issues, I understand from my most recent conversation with Mr. Polhill that
21 we still do not have all of the relevant documents. Despite the fact that the requested documents and
22 information were requested quite some time ago, they have not been forthcoming timely.

23 16. I stated in my first report that, subject to the views expressed by the Court and other
24 interested parties, my then present intention was to confirm the objectives of the Debtor and OCC
25 with respect to the plan and disclosure statement currently on file. I did that. I understand that the
26 Debtor and the OCC remain in support of the plan currently on file. As noted above, I do not believe
27 that the plan is submitted in good faith by the Debtor. I do not support that plan. In my opinion, the
28 plan does not provide enough consideration for creditors and leaves Mr. Polhill in effective control

1 of key assets. I proposed changes to the plan, however the changes I proposed were rejected as not
2 acceptable to Mr. Polhill.

3 17. At the time of my first status report, I anticipated taking steps consistent with offering
4 creditors the opportunity to express their interests through the plan confirmation process, whether it
5 be with respect to the current proposed plan, as modified, or an alternative plan sponsored either by
6 the Debtor or the OCC. I observed at that time that inasmuch as any plan concerning the Debtor
7 will, in all likelihood, be structured as a liquidating plan and since there is no foreseeable prospect
8 for any return to the Debtor's equity interest-holders, I believe that the interests of the Debtor's
9 creditors are paramount. My views on this issue have changed since the time of my first status
10 report.

11 18. Since the time of my appointment, I have spoken with and received correspondence
12 from a number of creditors. In my observation, creditors fall into two principal camps. One camp
13 favors the plan that the Debtor has proposed and is supportive of Mr. Polhill. The other camp
14 believes that there are serious issues that arise from the Debtor's operations pre-petition, including
15 allegations that the Debtor operated a Ponzi-scheme. These creditors are very weary of any plan that
16 includes the continued involvement of Mr. Polhill in any capacity. Although their views about Mr.
17 Polhill's involvement vary widely, both creditor camps agree about one thing: there is consensus that
18 this process has been afforded sufficient time and the time for action is upon all involved.

19 19. While my investigation is far from completed, I have identified a number of issues
20 that call into question the feasibility of any plan that is premised on the continued involvement of
21 Mr. Polhill in any capacity. To the extent that Mr. Polhill's continued involvement with assets or
22 business interests is necessary to achieve value in future recoveries for the Debtor's creditors, as
23 some have suggested, I believe that there is good reason to be seriously concerned that such
24 recoveries will ever be realized as forecasted, if at all.

25 20. I am concerned that the OCC in this case is tainted by the involvement of members
26 who have ongoing, continued business relations with Mr. Polhill.

27 21. At the status hearing conducted in this case on August 9, 2011, my counsel advised
28 the Court that while I needed additional time to extend my investigation and to explore chapter 11

1 alternatives for this case, I did not need an indefinite period of time. My counsel suggested that
2 should my efforts to identify a reasonable path forward toward confirmation of a feasible plan fail,
3 the court might treat the December 6, 2011 status conference as an Order to Show Cause hearing on
4 why the case should not be converted to chapter 7.

5 22. I have extended my investigation to a point and I have considered and explored
6 Chapter 11 alternatives for this case sufficient to formulate recommendations to the Court. I
7 recommend that this case be converted to a Chapter 7 case immediately.

8 23. In a phone call on December 1, 2011, I informed counsel for the OCC about my
9 views regarding the way forward for this case under Chapter 7.

10 24. I believe that any Chapter 11 plan that would be proposed would in all likelihood
11 simply attempt to mimic what is already available under Chapter 7 of the Bankruptcy Code. There is
12 no business to reorganize and any plan involving the Debtor is most likely to be a liquidating plan.
13 In other words, I believe that confirmation of a Chapter 11 plan offers nothing that cannot be
14 otherwise achieved more efficiently and much less costly in a Chapter 7 liquidation. This is the case
15 because there are added costs of the Chapter 11 process, including plan confirmation costs and
16 payment of U.S. Trustee fees that are avoided in a Chapter 7 liquidation. Moreover, a Chapter 7
17 liquidation preserves the Debtor's tax attributes and substantial net operating loss carryforwards for
18 the benefit of creditors. The plan proposed by the Debtor and variations on that theme suggested by
19 the OCC do not.

20 25. Based on my observation that: 1) the Debtor up to my appointment has been
21 operated under the direction and control of Mr. Polhill who has a demonstrated track record of failed
22 investments and losses over more than two decades of handling investor funds; 2) the Debtor's plan
23 previously proposed in this case called for Mr. Polhill to remain in possession, management and
24 control of related and affiliated entities of the Debtor which in fact control Capital Foods, which
25 both the Debtor and the OCC contend is the asset with existing and the most significant prospect for
26 future value; and, 3) particularly given the poor record keeping by Mr. Polhill and the staff who
27 worked side by side with him and at his direction, not only of the Debtor's records but those of his
28 related and affiliated entities, that by happenstance or design make tracking investments and

1 verifying transactions as taking place as represented to investors and third parties, including tax
2 authorities, extremely difficult, I am unable to conclude that any plan for future reorganization built
3 around investments and returns based on Mr. Polhill's involvement will have any hope of success.
4 Indeed, if past is prologue of the future, my current view, based on everything I have learned
5 notwithstanding the poor cooperation I have received in trying to ferret out the true financial history
6 of the Debtor and its investments on behalf of investors, more likely than not any plan that is based
7 on Mr. Polhill's performance is likely to be followed by the need for further financial reorganization
8 or liquidation. Moreover, in the plan last proposed to this Court and creditors, creditor-investors
9 were given the opportunity to elect to either (a) preserve their claims on account of their investments
10 in the Debtor and its related and affiliated entities, or (b) give up those claims through a settlement
11 and release agreement whereby Polhill and related and affiliated persons and entities would
12 contribute certain limited assets into a liquidating trust under the control of a liquidating trustee to be
13 elected by creditors. Based on my observations of the ownership and control Mr. Polhill proposes to
14 maintain in his related and affiliated entities that in turn dictate the management and control of
15 Capital Foods and its related and affiliated entities, I believe creditor-investors are getting far too
16 little in the way of present value consideration for the claims they likely hold against Mr. Polhill and
17 his related and affiliated entities relating to misrepresentations in offering materials, violations of
18 security laws, if not fraud, in connection with their investments through Mr. Polhill in the Debtor
19 and investments "channeled" through the Debtor in supposedly separate entities.

20 26. Moreover, if an orderly liquidation plan is proffered as an alternative to a
21 permutation of the earlier plan offered by the Debtor based on Mr. Polhill's management and control
22 of Capital Foods assets, I continue to observe that Chapter 7 is a more efficient and less costly
23 alternative to a liquidating plan, and that the Bankruptcy Code provides a time-tested road map for
24 an independent trustee to carry out an orderly liquidation so as to maximize the value of the assets
25 that in fact are held by the Debtor's estate. Moreover, conversion to Chapter 7 would enable an
26 independent Chapter 7 trustee to perform investigations and pursue actions he or she deems
27 appropriate by taking advantage of section 726(b) of the Bankruptcy Code (11 U.S.C. §726(b))
28 which provides that Chapter 7 administrative expenses will have priority over the excessive

1 administrative claims that already exist in this Chapter 11 case. At the present time, as noted above,
2 there are insufficient funds available to pay all Chapter 11 expenses, if allowed as incurred, and there
3 are no readily available funds to satisfy the deficiency, much less additional expenses, on
4 confirmation of a Chapter 11 plan. Therefore, I recommend that the case convert to Chapter 7
5 without further delay so that a Chapter 7 trustee can be appointed and can begin administration of
6 the Chapter 7 estate while funds are available to cover the Chapter 7 trustee's and his or her
7 professionals' expenses.

8 27. Finally, I believe that another added benefit of the Chapter 7 process is that creditors
9 will be required to file proofs of claim under penalty of perjury and prove up their claims against the
10 Debtor. My investigation revealed that on the eve of bankruptcy, the Debtor added more than \$20M
11 in investor related claims to its books and later listed these additional claims on its bankruptcy
12 schedules as undisputed. Many of these additional claims arise from off-balance sheet investments
13 made by investors such as the kind described above involving Lincoln Estates, LLC. I am concerned
14 that these additional claims warrant particular attention as they appear to involve many creditors who
15 enjoyed (and in some instances, continue to enjoy) close relations with Mr. Polhill.

16 28. For these and other reasons, I believe that it is in the paramount interest of creditors
17 that this case be converted to Chapter 7.

18
19
20 Dated: December 5, 2011

By: 
Christopher R. Barclay, Chapter 11 Trustee

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6 Attorneys for Christopher R. Barclay,
7 Chapter 11 Trustee

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10 In re)
11 AMERICAN PACIFIC FINANCIAL)
12 CORPORATION,)
13 Debtor.)

CASE NO. BK-S-10-27855-BAM
Chapter 11
**DECLARATION OF CHRISTOPHER R.
BARCLAY IN SUPPORT OF SECOND
STATUS REPORT OF CHAPTER 11
TRUSTEE**
Date: December 6, 2011
Time: 10:00 a.m.
Ctrm: BAM - Courtroom 3
Foley Federal Building
300 Las Vegas Blvd. South
Las Vegas, NV 89101
Judge: Hon. Bruce A. Markell

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23)
24 I, Christopher R. Barclay, declare as follows:

25 1. I am the duly appointed Chapter 11 trustee of the bankruptcy estate of American
26 Pacific Financial Corporation ("Debtor"). In this capacity, I have taken certain actions and
27 undertaken an investigation and review of the Debtor's assets and liabilities as well as of its financial
28

1 relationships with various related and affiliated entities and other insiders and its creditors. My
2 investigation and review is not complete, nor have I identified resources readily available to me
3 sufficient to fund and conduct a full scale forensic accounting investigation.

4 2. Based on my review and investigation to date, it is apparent that the Debtor has, at
5 best, only nominal operations at present. Although the Debtor's schedules list a great number of
6 purported investments, with an attributed book value of more than \$16 million, it appears that only a
7 very small number of the scheduled investments (less than six) are reasonably characterized as
8 performing investments. Of these investments, the single largest investment is the Debtor's
9 investment in Capital Foods, LLC. This investment however generates no current income or cash
10 flow and the Debtor's voting interest in this entity is a non-controlling interest. The remaining
11 performing investments include an oil & gas interest that currently generates monthly royalties of
12 between \$1,500 and \$5,000 and loans or promissory notes that provide approximately \$10,000 per
13 month of interest income. As all of these investments are passive holdings that are in various stages
14 of liquidation, the Debtor has no ongoing operations beyond collecting and depositing remaining
15 investment returns.

16 3. The Debtor reports that it currently holds a minority (26.5 percent) ownership of voting
17 class shares (Class A membership units), together with an 87 percent ownership share of Class B
18 preferred non-voting, but preferred return, membership units in Capital Foods. Unfortunately, it is
19 far less clear as to what, if any, current market or liquid value these ownership interests may have,
20 particularly given the many layers of debt, encumbrances, liens and cross guarantees under which
21 these interests and related interests in affiliated entities and investments suffer. According to the
22 Debtor's most recent plan filing (Docket #301 at page 2), the Debtor contends that the future net
23 worth of these Class A and Class B units in Capital Foods may be as much as \$45.5 million extended
24 out six or seven years to 2017.

25 4. I have spent time, as has my counsel, reviewing available documentation of the Debtor's
26 interests, claims and investments in Capital Foods in an attempt to reconcile discrepancies, if not
27 outright contradictions, between documents which purport to support the Debtor's statements in its
28 last plan filing (Docket #301) to the effect that the "[o]wnership interests in Capital Foods have

1 remained the same since 1998.”

2 5. On June 2, 2011, I met with Mr. Larry Polhill at the Debtor’s offices. I interviewed Mr.
3 Polhill regarding the Debtor’s operations and performing investments. I also met the Debtor’s
4 controller, Ms. Marilyn Donegan and another staff member, Ms. Juanita (“Jeanie”) Aranda at this
5 time.

6 6. On June 13, 2011, I met with a number of the members of the Official Committee of
7 Creditors (“OCC”) in this case at my offices in Irvine, California. Some members attended in
8 person, and others attended by telephone conference connection, including the OCC’s counsel, Louis
9 Bubala of the Armstrong Teasdale law firm. At this meeting, the attendees shared their perspectives
10 and observations about the case to date as well as some of their histories of dealing with the Debtor
11 and Mr. Polhill in various financial transactions through the Debtor and through related and
12 affiliated entities. We also discussed the members’ differing views about case alternatives and
13 possible resolutions.

14 7. I then met on June 15, 2011, with Mr. Polhill, his personal counsel, Michael Heyman,
15 the Debtor’s counsel Ms. Thomas, and my counsel, Mr. Hill at the offices of the Sullivan Hill law
16 firm in San Diego, California to review the Debtor’s financial history, its financial affairs and its
17 assets and liabilities, as well as to gain an understanding of the Debtor’s perspective of the Chapter
18 11 case, the dynamics with its creditors, its proposed plan and its perspective as to a resolution in the
19 case in light of the challenges it faced in the case as well as in the business markets in which its
20 assets resided.

21 8. On July 20, 2011, at my request I met with my counsel and Mr. Polhill and his counsel,
22 Michael Heyman, and for part of the meeting, with Marilyn Donegan, at the offices of the Debtor in
23 Grand Terrace, California to further review the Debtor’s business affairs. At this same meeting, I
24 devoted time to further identifying the Debtor’s files and records. Prior to the meeting, I instructed
25 Mr. Polhill and his staff to assemble, protect and maintain the Debtor’s books and records in
26 preparation of an anticipated turnover of those records.

27 9. From the beginning of my tenure as Trustee, I attempted to obtain access to the report
28 prepared by the OCC’s forensic accountant, Craig L. Greene, who was appointed by order of this

1 Court. Based on my visits at the Debtor's business premises, my very preliminary viewing of its
2 records and record keeping practices, and my interviews with Mr. Polhill and certain of his staff, I
3 felt it was prudent for me to view Mr. Greene's report and interview Mr. Greene himself in order to
4 confirm what records were turned over to him, what analysis he made and what conclusions, if any,
5 he had drawn from his work, particularly to ascertain whether I had been given at least equal access
6 to similar files, records and materials, and to confirm that I was addressing the same subjects of
7 concern that had previously warranted Mr. Greene's attention. Because of its practice of transferring
8 investors from one asset to another, multiple levels of ownership, and the Byzantine nature of the
9 Debtor's accounting records and documentation, I concluded that it is extremely difficult to gain a
10 clear understanding of the Debtor's business affairs without considerable effort and likely
11 extraordinary expense.

12 10. I instructed my counsel to file a motion with this Court seeking authorization to take Mr.
13 Greene's Rule 2004 examination, and to compel his attendance at that exam with his report and his
14 work papers and all documents given to him to support his work. The OCC opposed my motion and
15 attempted to deny me access to Mr. Greene on the grounds that his report and opinions were
16 privileged. The Court granted my motion over the objection of the OCC. I obtained a copy of Mr.
17 Greene's report, which I reviewed, and I attended Mr. Greene's examination on September 20, 2011.

18 11. On September 30, my counsel (Mr. Hill) wrote an email to the Debtor's counsel (Ms.
19 Kaaran Thomas) and Mr. Polhill's counsel (Michael Heyman). Mr. Hill wrote:

20 "Trustee Barclay is still grappling with understanding the interrelationships among the
21 entities involved with the Capital Foods interests and investments of APFC, directly and
22 indirectly. What we need to get is better identification of the liens, claims and
23 encumbrances, or guarantees, business agreements, or subordination agreements, that in
24 anyway impair or limit the ability of APFC to market and sell, or encumber, its interests in
25 any of the Capital Foods related interests or investments, or to realize value out of any such
26 interests on an interim basis. In our prior discussions with Mr. Polhill, he indicated that there
27 were such limitations, but they were not specifically identified to us, at least not yet in
28 writing. If and to the extent there are such limitations, re [sic] request that we also receive
copies of all documents that evidence such limitations."

12. On September 30, I wrote to Mr. Polhill to inform him that I made arrangements to

1 retrieve the Debtor's records in his possession.¹ I also inquired about the availability of a schedule
2 of the investments/loans made by the Debtor that I might use to determine that the records turned
3 over constitute the complete records of the Debtor.

4 13. On October 4, I wrote an email to Mr. Polhill following up on my September 30 inquiry
5 as no response had been forthcoming. A short time later, Mr. Polhill responded and indicated that he
6 would speak to Ms. Donegan and provide a reply the next day.

7 14. On October 5, I wrote again to Mr. Polhill and inquired about the availability of a
8 schedule of the investments/loans made by the Debtor that I might use to determine that the
9 inventory of records to be turned over is complete. A short time later, Mr. Polhill responded and
10 wrote "we have the accounting schedules in quick books [sic] and the schedules of the chapter 11
11 petition."

12 15. On October 6, I exchanged emails with Mr. Polhill. I inquired about his and Ms.
13 Donegan's availability for a meeting at his office on October 7. I told Mr. Polhill that I wanted to
14 review the documents concerning the Debtor's transactions with Midwest Business Credit, LLC
15 ("MWBC")² and also the documents relating to transactions with Café Valley, Inc. (one of the two
16 principal Capital Foods, LLC investments). Mr. Polhill confirmed his and Ms. Donegan's
17 availability and willingness to meet with me.

18 16. On October 7, I met with Mr. Polhill and Ms. Donegan at their offices. In this meeting,
19 we reviewed the schedule of investments available from the Debtor's QuickBooks records. We had
20 a wide ranging discussion touching on some of the investments made by the Debtor that were later
21 recorded as a loss. In my observation, both Mr. Polhill and Ms. Donegan responded at times with
22 equivocation and appeared to evade direct responses to simple questions about why particular entries
23 were recorded in the Debtor's books and records, which at all times relevant were maintained by Ms.
24 Donegan.

25 _____
26 ¹ There are other records in the Grand Terrace office that Mr. Polhill and Ms. Donegan claim are not APFC records, but
27 rather books and records of affiliates. Mr. Polhill and Ms. Donegan remain in possession of these records and I have
reserved all rights regarding the issue of ownership of them.

28 ² MWBC is an asset-based lender with offices in Illinois. The Debtor's records reflect that the Debtor made loans to
MWBC and at one time owned an interest in MWBC. At all relevant times, Mr. Polhill was a manager of MWBC.

1 17. In the course of the review, I observed and made inquiries about certain accounts that
2 appear under the heading "Owner Draws". One account reflects payments made by the Debtor to
3 Party A and another reflects payments made by the Debtor to Party B.³ The Party A owner draw
4 account is entitled "Lincoln Draw-Party A" and the Party B owner draw account is entitled "Party B
5 Draws".

6 18. In lay terms, the balances accumulated in these general ledger accounts are a cumulative
7 total of payments made by the Debtor to Party A and Party B, each, on account of a particular third
8 party investment made by Party A and Party B through the Debtor. The Debtor's QuickBooks
9 records reflect that the balances in these accounts were written off as a loss during the fiscal year
10 ended July 31, 2007.⁴ At the time of the write-off in 2007, Party A's owner draw account had a
11 balance of \$951,713.51 and Party B's owner draw account had a balance of \$714,785.24. Additional
12 losses were recorded in 2008.

13 19. I asked Mr. Polhill to explain why the Debtor's accounting records reflect "owner draw"
14 accounts in the name of Party A and Party B. Mr. Polhill's response is that the accounts were a form
15 of income tax reporting accommodation made by the Debtor for these parties. According to Mr.
16 Polhill, Party A and Party B each invested more than \$500,000 through the Debtor in a Limited
17 Liability Company (Lincoln Estates, LLC) that owned real property in Bluffton, Indiana. I
18 understand that the real property in question comprised a facility of some kind that was leased to
19 Inventure Foods (fka Poore Brothers, Inc.).

20 20. Apparently, the Debtor's view was that by treating the payments as an "owner draw"
21 and structuring the payments so that they were made by the Debtor and not by the LLC, the Debtor
22 believed that the payments in question could be made without requiring any disclosure by either the
23 Debtor, the LLC, or Party A and Party B to any governmental entity for income tax reporting
24 purposes. The payments in question were not reported on the tax returns of the LLC or the k-1
25

26 ³ The identities of Party A and Party B are intentionally omitted. Both Party A and Party B are members of the OCC.
27 Party B holds an interest in at least one investment that is presently actively managed by Mr. Polhill.

28 ⁴ The actual date that the balances were written off and recorded as a loss is subject to further investigation as the
accounting program used by the Debtor, QuickBooks, permits the backdating and alteration of accounting data without
evidence of an accounting trail of changes made.

1 forms issued by the LLC to Party A and Party B annually. According to Mr. Polhill, in his own
2 words, helping the Debtor's investors avoid payment of income taxes on their purported investment
3 gains on account of investments made by or through the Debtor was "all part of the game" for those
4 investors who requested it.

5 21. I also made inquiries of Mr. Polhill and Ms. Donegan about purported loan transactions
6 that appear in the Debtor's QuickBooks records involving MWBC. Mr. Polhill explained that at one
7 time MWBC was majority owned (60%) by Stillwater Capital, LLC, Dakota Farms, LLC and the
8 Debtor. I obtained documents that described Mr. Polhill as the manager for MWBC. I observed that
9 the Debtor's records reflect that the outstanding balance of the loans to MWBC (\$335,000) was
10 written off and recorded as a loss on July 10, 2009.⁵ Mr. Polhill and Ms. Donegan were not able to
11 explain why the charge off was recorded. Mr. Polhill questioned the fact that the Debtor ever loaned
12 money to MWBC, notwithstanding what the Debtor's QuickBooks records showed. I inquired about
13 the availability of accounting records for MWBC and Mr. Polhill stated (in Ms. Donegan's presence)
14 that those records were prepared by and maintained by MWBC's Illinois-based management and not
15 available at the Grand Terrace office.

16 22. In the course of our discussion about the Debtor's transactions with MWBC, I made
17 inquiries about documentation surrounding apparent borrowing and lending transactions in 2005
18 involving an Illinois-based bank, Capital Foods, MWBC, Mr. Polhill and the Debtor. Based on Mr.
19 Polhill's explanation, I understand that the Debtor sought to raise money that it intended to lend to
20 Café Valley, Inc. Capital Foods and Mr. Polhill, individually, arranged to borrow \$500,000 from the
21 Illinois bank. As collateral for the loan, Capital Foods pledged 900,000 shares of Inventure Foods
22 stock and a note receivable from MWBC for \$500,000. I inquired why Capital Foods had loaned
23 \$500,000 to MWBC. Mr. Polhill equivocated and after providing a series of evasive responses, he
24 finally admitted that the loan from Capital Foods to MWBC existed in paper only – no \$500,000
25 loan by Capital Foods to MWBC was ever made. I asked Mr. Polhill why documentation was
26 prepared to create the appearance of a loan between Capital Foods and MWBC and he explained that

27 _____
28 ⁵ The Debtor's transactions with MWBC are especially pertinent to my investigation because they relate, in part, directly
to transactions involving Capital Foods, LLC.

1 the reason was because the Illinois-based bank required Illinois-based collateral.

2 23. Based on my review of the Debtor's QuickBooks records, I noted that the Debtor
3 recorded an obligation owed to the Illinois-based bank in the amount of \$500,000. The Debtor made
4 monthly payments to the bank in connection with the 2005 loan through January 2010. Other entries
5 recorded on the Debtor's books, which appear to have been backdated to 2008, show the bank loan
6 removed along with amounts due to the Debtor from Café Valley, Inc. According to Mr. Polhill and
7 Ms. Donegan, the loan was removed from the Debtor's books because the Debtor was not the
8 borrower. My investigation of these transactions and related matters is ongoing.

9 24. Among other inquiries, I also asked Mr. Polhill to tell me about AP Venture Fund. The
10 Debtor's QuickBooks records reflect that the Debtor had a more than \$5.0M interest in this entity
11 that terminated January 1, 2010.

12 25. According to Mr. Polhill, AP Venture Fund was set up as a form of hedge fund,
13 although he personally did not like the term hedge fund. He explained that the idea was that AP
14 Venture Fund would raise money from investors and use that money to make investments in entities
15 or deals, where in addition to a stated return, the fund would also participate through some means in
16 any upside in the underlying investment performance, such as through an "equity kicker".

17 26. Mr. Polhill explained further that the funds that AP Venture Fund raised from investors
18 were later transferred to the Debtor. I understand that these transfers were accounted for as a loan
19 from AP Venture Fund to the Debtor. Additionally, according to Mr. Polhill, accounting entries
20 were made on the books of the Debtor reflecting that it transferred certain equity interests and other
21 investments to the AP Venture Fund in exchange for an ownership interest in AP Venture Fund.

22 27. Mr. Polhill explained that, notwithstanding the accounting entries made, in reality the
23 equity interests and other investments remained in the name of the Debtor and those interests were
24 never legally transferred by the Debtor to AP Venture Fund. Mr. Polhill and Ms. Donegan explained
25 that in contemplation of the Debtor filing its petition for bankruptcy, the accounting for the
26 purported asset transfers was essentially unwound whereby entries were made on the Debtor's books
27 reflecting the termination of its interest in AP Venture Fund and a reduction of the loan payable by
28 the Debtor to AP Venture Fund.

1 28. During the course of the October 7 meeting, I requested and I was provided with certain
2 documents and written information. For items not readily available, I asked Ms. Donegan and Mr.
3 Polhill to locate or otherwise obtain the information and to provide it to me. At the conclusion of the
4 meeting, I expressed to Mr. Polhill my disappointment in the condition of the Debtor's accounting
5 records and in particular Ms. Donegan's inability to fully explain entries that she made in those same
6 records. Mr. Polhill stated that he recognized that the records were poorly maintained and that Ms.
7 Donegan had performed poorly. I observed that Mr. Polhill had requested that the Debtor's estate
8 pay his company for Ms. Donegan's services, which was the practice prior to my appointment. I
9 noted, however, that in light of Ms. Donegan's inability to fully explain the records she maintained
10 and admitted significant errors in those records, it was problematic for the bankruptcy estate to
11 provide compensation for her services. Mr. Polhill said that he understood my position.

12 29. On October 11, Rosemary Nguyen one of the members of the OCC contacted me to
13 request a face to face meeting.

14 30. I later received a similar meeting request from another OCC member, Mr. Joseph
15 McCoy. I responded to these meeting requests and a meeting was scheduled for October 27.

16 31. On October 12, 2011, I wrote an email to Mr. Polhill and Ms. Donegan and requested
17 certain records, including copies of the tax returns for Lincoln Estates, LLC. In this same email, I
18 requested a follow-up meeting with Mr. Polhill and Ms. Donegan on October 18. Mr. Polhill later
19 informed me that he would be out of town on the 18th, but agreed to permit the meeting to go
20 forward, although his own participation would be by telephone. We agreed that I would travel to the
21 Grand Terrace office where Ms. Donegan would be present and that Ms. Donegan would facilitate
22 Mr. Polhill's participation by phone.

23 32. Prior to the October 18 meeting, I received copies of the 2005 to 2008 income tax
24 returns for Lincoln Estates, LLC and certain other documents and records that I requested.

25 33. On the morning of October 18, before our meeting, I wrote an email to Ms. Donegan,
26 with a copy to Mr. Polhill to request copies of the Lincoln Estates, LLC tax returns for 1997 to 2004.
27 Mr. Polhill replied a short while later in an email copied to his counsel (Mr. Heyman) wherein he
28 wrote "...per your earlier request, I don't know if we have the prior tax returns that far back for

1 Lincoln, prior to 2004,...I will look into Lincoln further when I return". In a separate email to Ms.
2 Donegan on the same morning, with a copy to Mr. Polhill, I wrote to request copies of the tax returns
3 for MWBC for the years 2005 to 2008.

4 34. When I met with Ms. Donegan (in-person) and Mr. Polhill (telephonically) on October
5 18, I renewed my request for the identified tax returns for Lincoln Estates, LLC and MWBC. I was
6 told at this time that the records either had not been located or they were not available. I directed
7 Mr. Polhill and Ms. Donegan to locate or obtain the documents requested.

8 35. On October 19, I wrote an email to Mr. Polhill and Ms. Donegan in follow-up to our
9 October 18 meeting. Among other inquiries, I renewed my request for tax returns and other records
10 relating to Lincoln Estates, LLC and MWBC.

11 36. On October 25, I wrote an email to Mr. Polhill and Ms. Donegan. In this email, I
12 requested an update regarding the status of their response to the items of information that I had
13 requested but that I had not received from them.

14 37. On October 27, I met with members of the OCC and their counsel (Lou Bubala, Esq.)
15 who, along with my counsel and some members of the committee, participated by telephone. The
16 members of the committee requested a report on the status of my efforts and the direction that I
17 believed the case was headed. The sense that I received from this meeting is that some members of
18 the committee were quite anxious to see progress with the case. I reported that since the time of my
19 last meeting with the committee, I had met with Mr. Polhill on a number of occasions. I explained
20 also that I had made requests in writing for production of records and information by Mr. Polhill, but
21 that I had not received a full and complete response. I also explained to the members present that
22 my investigation of the Debtor's books and records underlying its financial affairs had been
23 hampered by the poor condition of the Debtor's records and the inability of the Debtor's
24 representatives to provide complete explanations to my questions; I described the Debtor's records
25 as akin to a house of mirrors. I cautioned the members present that I was concerned about factors
26 that complicated the ability to obtain value from the Debtor's interest in Capital Foods, LLC.

27 38. On the evening of October 27, I wrote an email to Mr. Polhill to advise him of my plans
28 to go to his Grand Terrace office to review and complete an inventory of the APFC records there that

1 had been set aside for turnover to me. Mr. Polhill responded to indicate that while both he and Ms.
2 Donegan would be out of town and unavailable, he would nonetheless make arrangements for my
3 access to the records.

4 39. On October 28, I went to Mr. Polhill's Grand Terrace office. While I was present at the
5 office, I spoke to Mr. Polhill by phone. In this call, Mr. Polhill reported to me that the tax return and
6 other records I had requested were not available. Mr. Polhill suggested that perhaps an alternative
7 would be to write to the Internal Revenue Service to request copies. In my mind, this was not an
8 acceptable alternative as tax return copies are generally only available for the last seven years and
9 the tax returns I sought included those for periods beyond seven years. I told Mr. Polhill that I
10 wanted to review certain of the files in Ms. Donegan's office while I was present and I requested that
11 he authorize access to her office. Mr. Polhill agreed to my request.

12 40. On October 28, I reviewed certain of the files in Ms. Donegan's office. I was generally
13 familiar with how the records were kept and where particular records were located within Ms.
14 Donegan's office. This is because Ms. Donegan had shown me and others present the manner in
15 which the files were organized in her office during the meeting that occurred at the Grand Terrace
16 office on July 20, 2011. Based on my review of the records present in Ms. Donegan's office on
17 October 28, I confirmed that records I had requested and that I had been told were not available were
18 in fact easily accessible in Ms. Donegan's office.

19 41. After I returned to my office on October 28, I wrote an email to Mr. Polhill. I advised
20 Mr. Polhill that I had met with members of the OCC and their counsel and that I had informed the
21 committee members that although I had requested records and documents, certain of the items that I
22 had requested were not forthcoming. Specifically, no documents had been forthcoming in response
23 to Mr. Hill's September 30 email to Ms. Thomas and Mr. Heyman requesting documents relating to
24 Capital Foods, LLC. I requested a meeting with Mr. Polhill at his office on either November 7 or
25 November 8.

26 42. On November 3, I wrote another email to Mr. Polhill. In this email, I reminded Mr.
27 Polhill that I had not received a response to certain of the inquiries and information requests in my
28 October 19 email to him and, as well, nor my October 28 email regarding the lack of response to Mr.

1 Hill's September 30 email regarding Capital Foods, LLC. Later in the day on November 3, Mr.
2 Polhill responded and stated that he had delivered some additional information to Mr. Heyman
3 regarding Capital Foods, LLC. He stated further that Mr. Heyman and Mr. Hill would need "...to
4 connect and work on the balance of the process."

5 43. On November 7, 2011, Mr. Heyman wrote a letter to Mr. Hill enclosing certain of the
6 requested documents responsive to Mr. Hill's September 30 email. Mr. Heyman also wrote "In the
7 future, please direct all requests for documents and other information directly to me."

8 44. On November 17, 2011, I called Mr. Polhill to discuss with him the status of the renewal
9 of the insurance coverage that the Debtor has in place. In this call, I suggested to Mr. Polhill at face-
10 to-face meeting at his Grand Terrace office for the purpose of reviewing the available information
11 relating to Capital Foods, LLC and issues relating to its financing arrangements. Mr. Polhill stated
12 that he would need to confirm with his counsel first and would let me know. We later exchanged
13 emails and reached agreement to meet on November 22.

14 45. On November 21, Mr. Polhill wrote an email to me and informed me that on the advice
15 of his counsel he needed to cancel the meeting set for November 22. Mr. Polhill proposed instead
16 that the November 22 meeting be combined with a meeting that was tentatively set for December 1
17 when counsel would be present.

18 46. On November 21, Mr. Hill wrote an email to Mr. Heyman on my behalf to request
19 access to documents present at the Grand Terrace office. Mr. Hill wrote (in part):

20 "Michael:

21 Give me a call to discuss the documents that the Trustee is still requesting be made available
22 for him to review and copy as necessary. I left you a voice mail message earlier today. I will
23 be in the office a bit longer today and then fly to Vegas for hearings tomorrow in other cases,
but I will be available when not actually in the air.

24 The documents that the Trustee needs to review, and discuss with Mr. Polhill when he is
25 available, are documents that we are informed and believe are located in Grand Terrace, CA
under the possession and control of Larry Polhill, as follows:

- 26 1. All documents that refer or relate to Lincoln Estates, LLC
27 2. All documents that refer or relate to Capital Foods, LLC
28

1 3. All documents that refer or relate to Midwest Business Credit, LLC

2 Per the Trustee, based on his prior discussions with Mr. Polhill and staff in Grand Terrace,
3 there should be no burden imposed to produce these records as they are principally kept by
4 Marilyn Donegan in the filing cabinets in her office. If Mr. Polhill is not available to meet
5 with the Trustee in Grand Terrace as earlier scheduled, the Trustee is okay with starting the
6 review of the documents with questions to Mr. Polhill to follow if someone (Marilyn or
7 otherwise) can simply make them available to the Trustee in Grand Terrace tomorrow.”

8 47. Later in the evening on November 21, I wrote an email to Mr. Heyman. In this email, I
9 advised Mr. Heyman that I had made multiple requests for records and information regarding
10 Lincoln Estates, LLC and MWBC and that on more than one occasion I was advised by Mr. Polhill
11 and Ms. Donegan that the requested information was not available. I also provided Mr. Heyman
12 with copies of and excerpts from my email communications with Mr. Polhill prior to November 7
13 regarding my requests for records relating to Lincoln Estates, LLC and MWBC.

14 48. I understand that Mr. Hill and Mr. Heyman spoke on November 22. Following this
15 conversation, Mr. Heyman sent an email wherein he stated:

16 “All:

17 I had a productive conversation with Jim this morning. As a follow-up, Mr. Barclay is
18 welcome to visit the Grand Terrace office for a two-hour document review tomorrow before
19 noon or next Tuesday all day (morning preferred). Larry probably does not know where
20 specific documents are located, but, based on the prior emails, Mr. Barclay has good idea of
21 where to look for the documents he is seeking, so it should not be an issue.”

22 49. On November 29, 2011, I went to Mr. Polhill’s Grand Terrace office. When I arrived,
23 Mr. Polhill told me that he was prepared to discuss the Capital Foods, LLC financing arrangements.
24 Mr. Polhill stated that not all of the records and information that I had requested relating to Capital
25 Foods had been produced to me. I advised Mr. Polhill that my visit had been arranged through Mr.
26 Heyman and my intention was to review and copy records that I had requested from him previously.

27 50. I commenced a review of the records in Ms. Donegan’s office. As Mr. Polhill and Ms.
28 Donegan made no effort to produce the documents that I had requested, it was incumbent on me to
locate the records based on my familiarity, such as it was, with how they were maintained by Ms.
Donegan. Under the circumstances, it may well be the case that there are other records that Mr.

1 Polhill or Ms. Donegan have that are responsive to my document requests but which records I have
2 not yet seen.

3 51. Mr. Polhill closely supervised my review of the records. While I was reviewing the
4 records, Ms. Donegan volunteered that she had succeeded in locating the missing records relating to
5 Lincoln Estates, LLC that I had requested. In fact, these records are among the records that I
6 previously observed on October 28, 2011 among the files maintained by Ms. Donegan in her office.
7 I inquired about the MWBC records that I had requested be produced and Mr. Polhill responded by
8 indicating that they were unavailable.

9 52. In the course of my review of the Lincoln Estates, LLC tax returns and other records, I
10 asked Mr. Polhill if in fact Lincoln Estates, LLC ever held title to the Bluffton, Indiana property.
11 After some equivocation, Mr. Polhill admitted that the Debtor held title to the property at all relevant
12 times and that title was not transferred to Lincoln Estates, LLC. This is contrary to what was
13 reported in the LLC tax returns filed on behalf of Lincoln Estates, LLC.

14 53. I also inquired of Mr. Polhill regarding a transaction in 2003 purportedly between Party
15 C⁶ and Lincoln Estates, LLC. According to documentation contained in Party C's investor file, in
16 2003 Party C acquired a 44.3% interest in the Bluffton, Indiana property from Lincoln Estates, LLC.
17 Thereafter, the Debtor commenced making payments to Party C on account of the alleged interest in
18 the Bluffton, Indiana property.

19 54. I showed Mr. Polhill the documentation contained in Party C's investor file maintained
20 by the Debtor. Mr. Polhill stated that he could not recall the transaction specifically or whether it
21 was ever consummated. I asked Mr. Polhill to explain how the purchase price for the 44.3% interest
22 was determined. Mr. Polhill explained that Party C was attempting to arrange an IRC Section 1031
23 exchange from a sale of an unrelated property. Mr. Polhill explained further, that the purchase price
24 was dictated by the amount that Party C needed the price to be in order to avoid the recognition of
25 any gain on the sale of the other unrelated property. In Mr. Polhill's own words, it was an
26 accommodation by the Debtor to Party C. In response to a further question that I asked, Mr. Polhill

27 _____
28 ⁶ The identity of Party C is intentionally omitted. Party C is a close business associate of Mr. Polhill and a member of the OCC.

1 confirmed that although the documentation for the exchange transaction makes reference to a note
2 for the balance of the purchase price over the amount of cash deposited by Party C, there was never
3 any expectation that Party C would make payment on the note. It was simply part of the
4 accommodation.

5 55. After reviewing a number of documents, I informed Mr. Polhill that I wanted to have
6 photocopies of certain of the documents.⁷ Mr. Polhill personally made each copy and handed them
7 to me. In the course of photocopying documents, I asked again about the availability of the MWBC
8 records. Mr. Polhill stated again that the records in question were unavailable.

9 56. Later, while I was returning documents to Ms. Donegan's office and reviewing others, I
10 inquired a final time about the existence of the MWBC records. I asked Ms. Donegan directly if she
11 had the records and would she produce them. With a groan, she got up from her desk, went to one of
12 the filing cabinets in her office and removed two large files containing MWBC records. These files
13 included tax returns and financial statements among other items. I showed Ms. Donegan the
14 financial statements and asked her if she had prepared the reports. Ms. Donegan stammered a bit
15 and then admitted that not only had she prepared the reports, in fact she had personally maintained
16 the books and records of MWBC from 2004 to 2008. Ms. Donegan also confirmed that she
17 maintained a QuickBooks file for MWBC on her computer and that her data file also included some
18 information (albeit incomplete data) for periods after 2008. I requested a copy of the MWBC
19 QuickBooks files.

20 57. From the outset, my review of documents on November 29, 2011 was subject to a 2-
21 hour time limit. After I had completed my review of the available records within the available time,
22 I prepared to leave the office. As I was in the process of departing the office, Mr. Polhill approached
23 me and asked me to wait. As if to take a page from the OCC's own playbook in this case, Mr.
24 Polhill explained that he had spoken to Mr. Heyman and requested that I not leave with the
25 documents that he had photocopied and delivered to me after my review of them as Mr. Heyman

26 _____
27 ⁷ I had arranged for a copy service to accompany me to the Grand Terrace office. While the copy service scanned certain
28 documents that I reviewed and identified for copying, I accepted Mr. Polhill's offer to also use the copier in the Grand
Terrace office to make photocopies of other documents.

1 wanted to (quite belatedly) review the documents to determine if any were subject to the attorney-
2 client privilege. I instructed Mr. Polhill to request that Mr. Heyman contact Mr. Hill to discuss the
3 matter and I departed the Grand Terrace office with the documents already provided and reviewed
4 by me.

5 58. Later on November 29, I agreed to place the documents that I obtained that day with
6 Knox Attorney Service acting as a third-party repository pending resolution of any disputes
7 concerning the attorney-client privilege. Accordingly, at this time, I will not describe my findings
8 based on the documents that I reviewed. Notwithstanding the foregoing, I believe that the
9 documents I reviewed on November 29 pertain to very substantial issues that are likely to have a
10 direct bearing on the recoveries for creditors in this case.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing
12 is true and correct.

13 Executed this 5th day of December, 2011 at Irvine, California.

14
15 By:



16 Christopher R. Barclay
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Electronically Filed: December 5, 2011

6 Proposed Attorneys for Christopher R. Barclay,
Chapter 11 Trustee
7

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10 In re) CASE NO. BK-S-10-27855-BAM
11 AMERICAN PACIFIC FINANCIAL)
CORPORATION,) Chapter 11
12) **CERTIFICATE OF SERVICE**
Debtor.)
13)
14)
15) Ctrm: BAM - Courtroom 3
16) Foley Federal Building
300 Las Vegas Blvd. South
17) Las Vegas, NV 89101
Judge: Hon. Bruce A. Markell
18)

19 I am employed in San Diego County. I am over the age of 18 and not a party to this action.
20 My business address is 550 West C Street, Suite 1500, San Diego, California 92101.

21 On December 5, 2011, I served the foregoing document(s), described as:

- 22 **1. SECOND STATUS REPORT OF CHAPTER 11 TRUSTEE CHRISTOPHER R.**
23 **BARCLAY;**
24 **2. DECLARATION OF CHRISTOPHER R. BARCLAY IN SUPPORT OF SECOND**
STATUS REPORT OF CHAPTER 11 TRUSTEE

- 25 by placing the original a true copy thereof, by the following means to the persons as
26 listed below:
27 **A. ECF SYSTEM** On December 5, 2011, I checked the CM/ECF docket for this
28 bankruptcy case or adversary proceeding and determined that the following person(s) are on
the Electronic Mail Notice List to receive ECF transmission at the email address(es)

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indicated below:

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B. UNITED STATES MAIL, postage fully prepaid (*List persons and addresses. Attach additional paper if necessary*)

Hon. Bruce A. Markell

United States Bankruptcy Court
District of Nevada - Foley Federal Building
300 Las Vegas Blvd. South
Las Vegas, NV 89101

United States Trustees Office
300 Las Vegas Boulevard, S, Room 4300
Las Vegas, NV 89101

Courtesy Copy

Richard A. Hall, Esq.
BOTTOMLINE LAWYERS, APC
PO Box 237
Auburn, CA 95604

Request for Special Notice

☒

D. BY DIRECT E-MAIL (as opposed to through the ECF System) (*List persons and email addresses. Attach additional paper if necessary.*) Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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Request for Special Notice

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
December 5, 2011 at San Diego, California.

/s/ Jamie N. Vidovich
Jamie N. Vidovich